

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED

09/02/20
12:13 PM

September 2, 2020

TO PARTIES OF RECORD IN CASE 17-08-007:

This proceeding was filed on August 8, 2017 and is assigned to Commissioner Shiroma and Administrative Law Judge (ALJ) DeAngelis. This is the decision of the Presiding Officer, ALJ DeAngelis.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (*See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.*)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:mph

Attachment

ALJ/POD-RMD/mph

Decision **PRESIDING OFFICER'S DECISION** (Mailed 9/2/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Radiant BMT, LLC,

Complainant,

vs.

Southern California Edison Company
(U338E),

Defendant.

Case 17-08-007

Radiant BMT, LLC, Complainant
Southern California Edison Company (U338E), Defendant

PRESIDING OFFICER'S DECISION DISMISSING COMPLAINT

Summary

This decision grants the motion to dismiss filed by defendant Southern California Edison Company (SCE) and denies the requested relief by complainant Radiant BMT, LLC (Radiant). The complaint is dismissed. The Commission concludes that no law, rule, or tariff has been violated by SCE under the undisputed facts of this complaint proceeding and that SCE prevails as a matter of law. This decision also finds that the motion for summary judgement filed by Radiant, therefore, is moot and affirms the prior ruling by the Administrative Law Judge denying the motion for declaratory ruling filed by Radiant. This proceeding is closed.

1. Factual History

The material facts of this case are not in dispute. Complainant Radiant BMT, LLC (Radiant or complainant) is a renewable energy project developer.¹ Defendant Southern California Edison Company (SCE or defendant) is a California investor-owned electric utility.²

In 2012, the Commission adopted the Renewable Market Adjusting Tariff (ReMAT) program in Decision (D.) 12-05-035, as modified by D.13-01-041, and D.13-05-034.³ The ReMAT was a new pricing mechanism for the Commission's § 399.20 Feed-in Tariff (FiT) program, to implement statutory amendments to Public Utilities Code (Pub. Util. Code) § 399.20, enacted by Senate Bill (SB) 380 (Kehoe, Stats. 2008, ch. 544, § 1), SB 32 (Negrete McLeod, Stats. 2009, ch. 328, § 3.5), and SB 2 of the 2011-2012 First Extraordinary Session (Simitian, Stats. 2011, ch. 1).⁴

More specifically, in D.12-05-035, as modified by D.13-01-041, and D.13-05-034, the Commission implemented § 399.20, as amended, by adopting a

¹ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at para. 1. This document is available on the Commission's website at: <https://apps.cpuc.ca.gov/apex/f?p=401:57:0>.

² December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at para. 2.

³ D.12-05-035, *Decision Revising Feed-In Tariff Program, Implementing Amendments to Public Utilities Code Section 399.20 Enacted by Senate Bill 380, Senate Bill 32, and Senate Bill 2 1x and Denying Petitions For Modification of Decision 07-07-027 by Sustainable Conservation and Solutions for Utilities, Inc.* (May 24, 2012), as modified by D.13-01-041, *Order Modifying Decision (D.) 12-05-035, and Denying Rehearing of Decision, as Modified* (January 28, 2013), and D.13-05-034, *Decision Adopting Joint Standard Contract for Section 399.20 Feed-In Tariff Program and Granting, in part, Petitions for Modification of Decision 12-05-035* (May 23, 2013). These decisions are available on the Commission website at: <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=39010887>.

⁴ All section references are to the Pub. Util. Code, unless otherwise indicated.

standard tariff and power purchase agreement for electricity purchased by California's three large investor-owned electric utilities from small renewable "electric generation facilit[ies]," as defined by § 399.20(b). In these 2012 and 2013 decisions, the Commission further determined that the three large investor-owned electric utilities regulated by the Commission were responsible for procuring in the aggregate 493.6 megawatts (MW) of electricity under the ReMAT program.⁵

SCE's initiated its ReMAT program on November 1, 2013.⁶ Pursuant to its ReMAT program, SCE began to offer small renewable project developers, such as Radiant, 46.67 MW in each of the following three "product types":

(1) As-Available Non-Peaking, (2) As-Available Peaking, and (3) Baseload.⁷

These product types are defined in SCE's ReMAT tariff.⁸

SCE's standard ReMAT power purchase agreement (also known as a "PPA"), which was approved by the Commission,⁹ defines "As-Available Facility" as: "A generating facility that is powered by one of the following

⁵ D.12-05-035 at 76-77, as conformed by D.13-01-041, based upon the methodology approved in D.07-07-027 (the electric utilities' allocated share of the coincident peak demand, or each electric utility's allocated share of the total system-statewide peak).

⁶ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at para. 3. The Commission adopted the ReMAT program in D.12-05-035 to implement § 399.20.

⁷ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at para. 3. The Commission adopted the ReMAT program in D.12-05-035 to implement Pub. Util. Code § 399.20.

⁸ SCE's ReMAT tariff can be found on SCE's website at: https://library.sce.com/content/dam/sce/doclib/public/regulatory/tariff/electric/schedules/other-rates/ELECTRIC_SCHEDULES_ReMAT.pdf.

⁹ The Commission approved the standard ReMAT power purchase agreement in D.13-05-034; *See*, D.13-05-034 at 33.

sources, except for a de minimis amount of Energy from other sources: (a) wind, (b) solar energy, (c) hydroelectric ..., or (d) other variable sources of energy that are contingent upon natural forces other than geothermal.”¹⁰

SCE’s standard ReMAT tariff, as approved by the Commission, defines “As-Available Non-Peaking” as having “a generation profile demonstrating intermittent energy delivery with less than 95% of the excepted output generated between the hours of 6:00 a.m. and 10:00 p.m.”¹¹

On March 31, 2017, Radiant submitted a program participant request (also known as a “PPR”) to join SCE’s ReMAT tariff As-Available Non-Peaking product type queue.¹² Radiant submitted similar requests for queue positions within SCE’s ReMAT tariff As-Available Non-Peaking product type queue for three other projects on April 26, 2017, May 31, 2017, and June 13, 2017, respectively (all four projects are collectively referred to herein as “Projects”).¹³

Each of the Projects consisted of a generating facility of 3 MW or less in capacity powered by solar energy using photovoltaic (PV) panels and, importantly for purposes of this complaint, featured batteries to modify the timing and the amount of output from the facility, different from traditional solar PV projects without batteries.¹⁴

¹⁰ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company’s (U 338-E) Joint Statement of Undisputed Facts* at para. 7.

¹¹ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company’s (U 338-E) Joint Statement of Undisputed Facts* at para. 6.

¹² December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company’s (U 338-E) Joint Statement of Undisputed Facts* at para. 9.

¹³ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company’s (U 338-E) Joint Statement of Undisputed Facts* at para. 9.

¹⁴ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company’s (U 338-E) Joint Statement of Undisputed Facts* at para. 9.

Solar projects, in general, without storage enhancement, are not able to cause more than 5% of solar energy to cross the point of common coupling (PCC) between the hours of 10 p.m. and 6 a.m.¹⁵ However, the Projects have storage enhancements.¹⁶ Therefore, Radiant, at its discretion,¹⁷ is able to modify the Projects' solar generation profiles to fall within the hours of 10:00 p.m. to 6:00 a.m., which are the hours of generation applicable to Non-Peaking generation under the ReMAT program.¹⁸

SCE rejected Radiant's program period request for a queue position under the ReMAT program's As-Available Non-Peaking product type on April 20, 2017 and July 20, 2017.¹⁹

Complainant alleges that its Projects qualify under SCE's ReMAT program As-Available Non-Peaking product type and seeks an order from the Commission directing SCE to accept the program period request for a queue position under the Non-Peaking provisions of SCE's ReMAT program and to continue contract negotiations with Radiant.

¹⁵ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at 3 (para. 16), stating "Solar PV projects without enhancements are not able to cause more than 5% of solar energy to cross the PCC between the hours of 10 p.m. and 6 a.m."

¹⁶ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at para. 17.

¹⁷ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at 3 (para. 15) stating "The amount of solar energy generated by the Project on a particular day, the amount of solar energy stored in the Projects' battery components on a particular day, and Radiant's programming of the Projects' SCADA controls determine the amount of energy that crosses the PCC."

¹⁸ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at para. 17.

¹⁹ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at para 20 and 21. This filing is available on the Commission's website at: <https://apps.cpuc.ca.gov/apex/f?p=401:57:0>.

1.1. Procedural History and Related Commission Proceedings

On August 8, 2017, Radiant filed this complaint.

On September 22, 2017, SCE answered the complaint and filed a motion to dismiss the complaint.

On October 9, 2017, Radiant responded to SCE's motion to dismiss and filed a motion for summary judgement.

On October 16, 2017, the Commission held its prehearing conference in Case 17-08-007 to determine the parties, discuss the scope, the schedule, and other procedural matters in the case.

On October 24, 2017, SCE filed a response to Radiant's motion for summary judgement.

On November 3, 2017, the Assigned Commissioner issued the scoping memo and ruling (scoping memo) for this proceeding. The schedule set forth in the scoping memo included a request to parties to attempt to resolve the matter informally. The effort to resolve the matter informally included at least two meetings by the parties' representatives with decision-making authority before the end of January 2018.

On December 6, 2017, Radiant and SCE filed a joint statement of undisputed facts. Radiant and SCE agreed that there were no material facts in dispute, and that the matter should be resolved based on law.²⁰ The parties voluntarily waived their right to a hearing.²¹

²⁰ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at 4.

²¹ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at 4.

Also on December 6, 2017, in a case before the United States District Court for the Northern District of California (Court), the Court ruled on a complaint by Winding Creek Solar LLC, and found that the ReMAT program, as approved by the Commission in D.12-05-035, D.13-01-041, and D.13-05-034, was not compliant with the Public Utility Regulatory Policies Act (PURPA).²² The Court enjoined the Commission from continuing the ReMAT program and required the Commission to issue new orders implementing PURPA consistent with federal law.²³

On December 15, 2017, the Commission's Executive Director issued a letter suspending the three large electric investor-owned utilities' ReMAT programs, including SCE's ReMAT program.²⁴

Several months later, on July 12, 2018 and pursuant to Rule 6.1 of the Commission's Rules of Practice and Procedure, the Commission initiated a new rulemaking proceeding, Rulemaking (R.) 18-07-017,²⁵ to adopt, in accordance with the Court's order, new rules implementing PURPA consistent with federal law. In that rulemaking proceeding, the Commission recently issued D.20-05-006

²² *Winding Creek Solar LLC v. Michael Peevey et al.*, Case No. 13-cv-04934-JD *Findings of Fact and Conclusions of Law, and Order on Summary Judgment* (U.S. Dist. Ct. for the N. Dist. of Cal, Dec. 6, 2017). PURPA is codified generally at 16 U.S.C. §§ 824a-3 and 2601. Various provisions appear elsewhere in the United States Code. The federal regulations implementing PURPA are available at 18 C.F.R. Subchapter K starting at Part 290.

²³ *Id.* at 994.

²⁴ Letter from the Commission's Executive Director to Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company, re: *Re-MAT Program: Winding Creek Solar LLC v. Florio, et al.* Case 3:13- cv-04934-JD (N.D. Cal.) (December 15, 2017). This letter is available on the Commission's website at: <https://www.cpuc.ca.gov/feedintariff/>.

²⁵ R.18-07-017, *Order Instituting Rulemaking Regarding Continued Implementation of the Public Utility Regulatory Policies Act and Related Matters* (July 26, 2018). This rulemaking is available on the Commission's website at: <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=220420719>.

implementing PURPA, consistent with the Court's order, by adopting a New Qualifying Facility (QF) Standard Offer Contract for QFs of 20 MW or less.²⁶ In D.20-05-006, however, the Commission did not address its suspension of ReMAT.

On March 25, 2020, Radiant filed a motion for declaratory ruling. This motion was denied on May 21, 2020 by the Administrative Law Judge (ALJ).²⁷ In denying this motion, the ALJ stated the Commission's intention not to rule on Radiant's complaint until after the Commission lifts the suspension of ReMAT.²⁸

While the ReMAT program was suspended and the Commission was addressing the issues of federal law in R.18-07-017, this complaint remained pending. The Commission adopted three decisions extending the statutory deadline for the Commission's resolution of this complaint proceeding. On July 26, 2018, the Commission adopted D.18-07-043 extending the statutory deadline from August 8, 2018 to August 8, 2019.²⁹ On August 1, 2019, the Commission adopted D.19-08-011 extending the statutory deadline from

²⁶ D.20-05-006, *Decision Adopting a New Standard Offer Contract for Qualifying Facilities of 20 Megawatts or Less Pursuant to The Public Utility Regulatory Policies Act of 1978* (May 7, 2020). This decision is available on the Commission's website at:

<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=337709639>.

²⁷ This ruling is available on the Commission's website at:

<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=338277363>.

²⁸ May 19, 2020 *E-Mail Ruling Denying Radiant's Motion for Declaratory Ruling and Request for Status Conference*. This ruling is available on the Commission's website at:

<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=338277363>.

²⁹ D.18-07-043, *Order Extending Statutory Deadline* (July 26, 2018). This decision is available on the Commission's website at:

<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=220069674>.

August 8, 2019 to August 8, 2020.³⁰ On August 6, 2020, the Commission adopted D.20-08-013 extending the statutory deadline from August 8, 2020 to February 8, 2021.³¹

On June 26, 2020, the Assigned Commissioner and the Assigned ALJ issued a ruling in a different rulemaking, R.18-07-003,³² seeking comments on proposed modifications to the ReMAT program to align the program with federal law and recent Commission decisions in R.18-07-017 so that procurement under the ReMAT program may resume “promptly.”³³ The proposed modifications to the ReMAT program identified in the June 26, 2020 ruling in R.18-07-003 do not include any aspect of the ReMAT program at issue in this complaint proceeding.

Based on the intent to move "promptly," as indicated in the June 26, 2020 ruling, to make limited modifications to the ReMAT program in R.18-07-003 so that the ReMAT program may lawfully resume in light of the Commission's adoption of a PURPA compliant tariff in D.20-05-006, we find that it is the appropriate time to address the ReMAT issues framed by this complaint.

³⁰ D.19-08-011, *Order Extending Statutory Deadline* (August 1, 2019). This decision is available on the Commission's website at:

<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=310152707>.

³¹ D.20-08-013, *Order Extending Statutory Deadline* (August 6, 2020). This decision is available on the Commission's website at:

<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=345059459>.

³² R.18-07-003, *Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program*. This rulemaking is available on the Commission's website at

<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=218214739>.

³³ R.18-07-003, *Assigned Commissioner's and Assigned Administrative Law Judge's Ruling Seeking Comment on Proposed Modifications to the Renewable Market Adjusting Tariff Program* (June 26, 2020). This ruling is available on the Commission's website at:

<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=341389315>.

This decision grants SCE's October 9, 2017 motion to dismiss, thus making complainant's October 9, 2017 motion for summary judgment moot. The ALJ's May 21, 2020 denial of complainant's motion for declaratory ruling is affirmed.

This proceeding is closed.

2. Motion to Dismiss - Standard of Review

A motion to dismiss requires the Commission to determine whether the party bringing the motion prevails based solely on the undisputed facts and matters of law. The Commission treats such motions as a court would treat motions for summary judgment in civil practice."³⁴ "A motion for summary judgment is appropriate where the evidence presented indicates that there are no triable issues as to any material fact, and that based on the undisputed facts, the moving party is entitled to judgment as a matter of law."³⁵ A complaint should be dismissed if, "taking the well-pleaded factual allegations of the complaint as true, the defendant is entitled to prevail as a matter of law."³⁶ Here, the parties stipulated to facts, and we rely on those undisputed facts in making our determination.³⁷

3. Discussion – SCE's Motion to Dismiss

3.1. ReMAT Program

The question presented by SCE's September 22, 2017 motion to dismiss and Radiant's October 9, 2017 response is whether Radiant's Projects, which modify the generation profile of the Projects' solar generation with storage, fall

³⁴ D.14-03-032 at 4, citing to D.03-05-023.

³⁵ D.14-03-032 at 4.

³⁶ D.12-03-037 at 7, quoting D.99-11-023.

³⁷ See, December 06, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts*.

within the “product type” definition of As-Available Non-Peaking or As-Available Peaking under SCE’s ReMAT program.³⁸

In interpreting tariffs, the Commission relies on “traditional statutory construction principles” and, therefore, “the starting point of tariff interpretation is to look to the plain language” of the tariff.³⁹

The parties do not dispute that the Projects fall within the definition of “As-Available,” which includes solar generating facilities.⁴⁰ Our analysis, therefore, focuses on the distinction in the ReMAT tariff between Non-Peaking and Peaking.⁴¹

The ReMAT tariff defines the As-Available Peaking and As-Available Non-Peaking as follows:

As-Available Peaking: For the purpose of this Schedule, As-Available Peaking shall have the same meaning as the defined term “As-Available Facility” in Appendix A of the Re-MAT PPA and have a generation profile demonstrating intermittent energy delivery with 95% or more of the expected output generated between hours of 6:00 a.m. and 10:00 p.m. SCE reserves the right to request a generation profile and supporting information from the Project to confirm the generation profile.

As-Available Non-Peaking: For purposes of this Schedule, As-Available Non-Peaking shall have the same meaning as the defined term As-Available Facility in Appendix A of the Re-MAT PPA and have a generation profile

³⁸ Complaint at 5.

³⁹ D.16-01-049 at 4.

⁴⁰ Complaint at 11, stating: “First, the Projects meet the definition of as-available facilities because they are powered by solar energy, one of the enumerated energy sources under the definition of an “As-Available Facility” in SCE’s ReMAT PPA.”

⁴¹ Complaint at 5, stating “At issue in this Complaint is the distinction between AAP [As-Available Peaking] and AANP [As-Available Non-Peaking] projects.”

demonstrating intermittent energy delivery with less than 95% of the expected output generated between the hours of 6:00 a.m. and 10:00 p.m. SCE reserves the right to request a generation profile and any supporting information for the Project to confirm the generation profile.⁴²

The operative word in these definitions is “generated.” Noticeably, the ReMAT tariff definitions of Peaking and Non-Peaking do not reference “storage.” All the Projects in question generate solar energy between the hours of 6:00 a.m. and 10:00 p.m. and, therefore, fall within the plain language of the definition, set forth above, of “Peaking.” Accordingly, SCE acted consistent with its ReMAT tariff when rejecting Radiant’s request for consideration under the Non-Peaking product-type.

Moreover, Radiant incorrectly characterizes its Projects’ time of delivery of the electricity as the time of the Project’s “generation” of electricity. Radiant repeatedly argues that the Projects will *generate* electricity during Non-Peak hours, but it is apparent that, instead, Radiant is describing when the Projects will *deliver* electricity. The ReMAT definition of Peaking and Non-Peaking turn on the time of generation., The time of delivery thus is irrelevant to these ReMAT-defined terms. Radiant’s use of storage to modify the Projects’ generation profile so that delivery is made, at its discretion, during Non-Peak hours does not serve to render the Project’s Non-Peaking under ReMAT.

Therefore, Radiant's argument fails because, for purposes of defining the "product type," the time of delivery is not considered under the plain language of

⁴² SCE ReMAT Tariff, Section N.3. This SCE tariff is available at: https://library.sce.com/content/dam/sce-doclib/public/regulatory/tariff/electric/schedules/other-rates/ELECTRIC_SCHEDULES_ReMAT.pdf.

the tariff. The plain language of the ReMAT tariff clearly states that the product type, whether it is Peaking or Non-Peaking, is determined by when the “output [is] generated,” not delivered.⁴³ For this reason, based on the undisputed facts of this case, Radiant’s argument that a tariff violation exists by SCE’s failure to treat the Projects as Non-Peaking, has no merit. Radiant has failed to state a claim under the plain language of the ReMAT tariff upon which the relief sought can be granted.

As such, the Commission cannot order the relief sought by Radiant: a direction to SCE to accept the Radiant’s program period requests for a queue positions under the ReMAT As-Available Non-Peaking product type.

3.2. Pub. Util. Code Section 399.20

Radiant also argues that it is entitled to a contract under ReMAT because § 399.20(f)(1) requires SCE to make its ReMAT program available to all projects, including Radiant’s Projects, on a “first-come-first-served”⁴⁴ basis until SCE “meets its proportionate share of a statewide cap of 750 megawatts cumulative rated generation capacity.”⁴⁵

Radiant is correct regarding the “first-come-first-served” obligation in the statute. However, as a pre-requisite to being eligible for “first-come-first-served” obligation, Radiant must first qualify under the tariff for the product-type applied for, which in Radiant’s situation is the product-type As-Available

⁴³ SCE ReMAT Tariff, Section N.3.

⁴⁴ Pub. Util. Code § 399.20(f)(1) provides, in relevant part, as follows: “An electrical corporation shall make the tariff available to the owner or operator of an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the electrical corporation meets its proportionate share of a statewide cap of 750 megawatts cumulative rated generation capacity served under this section and Section 399.32.”

⁴⁵ Complaint at 12.

Non-Peaking. As discussed above, Radiant's Projects do not qualify as As-Available Non-Peaking under the tariff. As such, the "first-come-first-served" obligation in the statute does not apply.

Therefore, SCE is not in violation of that statute and, based on the undisputed facts of this case, Radiant's argument that a violation of § 399.20 exists fails. Radiant has failed to state a claim under § 399.20(f)(1) upon which the relief sought can be granted.

3.3. Policy Argument

Finally, Radiant argues that its interpretation of the ReMAT tariff, *i.e.*, that time of "delivery" rather than time of "generation" should define its Projects' product-type under the ReMAT tariff, advances a broad range of policy objects held by the Commission, the state of California, and the federal government. Radiant states that its "solar generation plus battery" Projects will help California integrate greater amounts of intermittent renewables into the electric grid by delivering more solar energy in the late afternoon and evening hours.⁴⁶ Additionally, Radiant states that its Projects will use underutilized lands and have a diminished need for transmission infrastructure because its Projects are sited closer to load.⁴⁷ Radiant points to other reasons to support its interpretation of the ReMAT tariff.

While these policy reasons may be consistent with broader goals of the state and federal government, we cannot force an interpretation of the existing and Commission-approved ReMAT tariff on SCE that is contrary to the plain language of the tariff. Moreover, to the extent the Commission seeks to change

⁴⁶ Complaint at 12.

⁴⁷ Complaint at 13.

the ReMAT tariff to better implement any of the policy objectives set forth by Radiant in its complaint, that task is not appropriate in a complaint proceeding, such as this proceeding. We do not make industry changes or new regulations in a complaint proceeding. Instead, we apply the existing law to the facts presented. Again, the plain language of the tariff makes it clear that Radiant's claim that it will modify the Projects' generation profile with storage (with no obligation to do so) to deliver a portion of energy during Non-Peaking hours does not convert the Projects from Peaking to Non-Peaking. We need not consider any further arguments.

SCE's motion to dismiss is granted based on complainant's failure to state a claim upon which the requested relief can be granted.

4. Motion for Summary Judgment and Motion for Declaratory Ruling

This decision grants the September 22, 2017 motion to dismiss by SCE on the basis that complainant fails to state a claim under the ReMAT program upon which the relief requested can be granted. Therefore, Radiant's October 9, 2017 motion for summary judgment is moot. Radiant's March 25, 2020 motion for declaratory ruling was denied by the Assigned ALJ on May 19, 2020, and we affirm that ruling today.

5. Motion to File Under Seal

On August 18, 2017, Radiant filed a motion for leave to file confidential materials under seal, namely, Exhibits 1-8, inclusive, to the complaint. This motion is granted. The materials submitted under seal shall remain sealed for 3 years from the effective date of this decision.

6. Need for Hearing

The Commission preliminarily determined in its August 23, 2017 Instructions to Answer that hearings were needed in this proceeding. This

determination was confirmed in the November 3, 2017 scoping memo. On December 6, 2017, the defendant and the complainant submitted a joint waiver of hearings and a statement that this matter could be decided as a matter of law on the pleadings.⁴⁸ Based on this joint waiver and statement, we change the Commission's preliminary finding to this matter does not require hearings.

7. Assignment of Proceeding

Genevieve Shiroma is the Assigned Commissioner and Regina DeAngelis is the Assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Radiant is a renewable energy project developer.
2. SCE is a California investor-owned electric utility.
3. SCE's Commission-approved ReMAT program started on November 1, 2013 with SCE making available 46.67 MW in each of the following three product types: (1) As-Available Non-Peaking, (2) As-Available Peaking, and (3) Baseload.
4. SCE's Commission-approved ReMAT PPA defines "As-Available Facility" as: "A generating facility that is powered by one of the following sources, except for a de minimis amount of Energy from other sources: (a) wind, (b) solar energy, (c) hydroelectric..., or (d) other variable sources of energy that are contingent upon natural forces other than geothermal."
5. SCE's Commission-approved ReMAT tariff defines As-Available Non-Peaking as having "a generation profile demonstrating intermittent energy delivery with less than 95% of the excepted output generated between the hours of 6:00 a.m. and 10:00 p.m."

⁴⁸ December 6, 2017 *Radiant BMT, LLC and Southern California Edison Company's (U 338-E) Joint Statement of Undisputed Facts* at 4.

6. On March 31, 2017, Radiant submitted a program period request to join SCE's ReMAT As-Available Non-Peaking product type queue.

7. Radiant submitted similar ReMAT program period requests for three other projects on April 26, 2017, May 31, 2017, and June 13, 2017.

8. The Projects are each a generating facility of 3 MW or less in capacity powered by solar energy using solar panels and feature batteries to modify the timing and the amount of output from the facility, different from traditional solar projects without batteries.

9. Solar projects, in general, without storage enhancement are not able to cause more than 5% of solar energy to cross the PCC between the hours of 10 p.m. and 6 a.m. However, the Projects have storage enhancements that function to modify the delivery schedule.

10. Radiant, at its discretion, is able to modify the Projects' solar delivery profiles to fall within the hours of 10:00 p.m. to 6:00 a.m., which are the hours of generation applicable to Non-Peaking generation under the ReMAT tariff.

11. SCE rejected Radiant's ReMAT program period requests for a queue position as Non-Peaking on April 20, 2017 and July 20, 2017 on the basis that Radiant's Projects are solar projects that generate power under the time periods set forth within the ReMAT definition of As-Available Peaking.

Conclusions of Law

1. A motion to dismiss requires the Commission to determine whether the party bringing the motion prevails based solely on the undisputed facts and matters of law.

2. For purposes of this case, the operative word in the definitions of As-Available Peaking and As-Available Non-Peaking under the ReMAT tariff is "generated."

3. References to storage are absent in the ReMAT tariff.
4. All the Projects in question generate solar energy between the hours of 6:00 a.m. and 10:00 p.m. and, therefore, fall within the plain language of the “product-type” definition of As-Available “Peaking” under the ReMAT tariff.
5. SCE acted consistent with its ReMAT tariff when rejecting Radiant’s program period requests for queue positions under the As-Available Non-Peaking ReMAT tariff.
6. Radiant’s allegation that the product-type under the ReMAT should be determined based on when its Projects *deliver* energy, as opposed when the Projects *generate* electricity, is not supported by the plain the language of the ReMAT tariff. The plain language of the ReMAT tariff clearly states that product-type is determined by when the “output [is] generated,” not delivered.
7. Based on the undisputed facts of this case, Radiant’s argument that a ReMAT tariff violation exists fails.
8. Radiant has failed to state a claim under the ReMAT tariff upon which the relief sought can be granted.
9. Under the ReMAT tariff, the Commission cannot order the relief sought by Radiant, which is a directive to SCE to accept Radiant’s program period requests for queue positions under the ReMAT As-Available Non-Peaking product-type.
10. As a pre-requisite to being eligible for the “first-come-first-served” obligation under § 399.20, Radiant must first qualify under the ReMAT tariff for the product-type it applied for, As-Available Non-Peaking.
11. Radiant does not qualify for the product type it sought, As-Available Non-Peaking, under the ReMAT tariff and, therefore, the “first-come-first-served” obligation set forth in § 399.20 does not apply.

12. Based on the undisputed facts of this case, Radiant's argument that a violation of § 399.20 exists fails.

13. To the extent the Commission may seek to change the ReMAT tariff to implement policy objectives set forth by Radiant's complaint, that task is not appropriate in a complaint proceeding.

14. The plain language of the ReMAT tariff makes it clear that Radiant's claim that it will modify the Projects' generation profiles (with no obligation to do so) to deliver a portion of energy during non-peak hours does not convert the Projects from As-Available Peaking to Non-Peaking under the ReMAT tariff, and we need not consider any further arguments.

15. Radiant's October 9, 2017 motion for summary judgement is moot and its March 25, 2020 motion for declaratory ruling is denied.

16. Radiant's August 18, 2017 motion for leave to file confidential materials under seal is granted. The materials submitted under seal shall remain sealed for three years from the effective date of this decision.

O R D E R

IT IS ORDERED that:

1. The relief requested by complainant Radiant BMT, LLC is denied.
2. Southern California Edison Company's September 22, 2017 motion to dismiss the complaint is granted.
3. The complaint is dismissed.
4. Complaint 17-08-007 is closed.

This order is effective today.

Dated _____, at San Francisco, California.